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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**JOSEPH FALTAOUS, PATTY LEE
SMITH on behalf of themselves and others
similarly situated,**

Plaintiffs,

v.

JOHNSON AND JOHNSON,

Defendant.

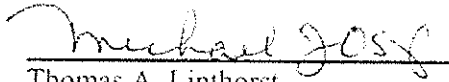
Civil Action No. 06-4787 (JLL)

NOTICE OF CROSS-APPEAL

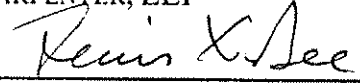
PLEASE TAKE NOTICE that, in response to the Notice of Appeal filed by plaintiff, Patty Lee Smith, on January 20, 2009, defendant, Johnson & Johnson, hereby cross-appeals to the United States Court of Appeals for the Third Circuit from the final judgment of the District Court entered on December 30, 2008, to the extent that the District Court's judgment denied defendant's motion for summary judgment based on the outside sales exemption under the Fair Labor Standards Act, 29 U.S.C. §213(a). The final judgment entered on December 30, 2008 is attached as Exhibit A to this notice.

PLEASE TAKE FURTHER NOTICE that, because the outside sales exemption would provide an alternative basis to affirm the December 30, 2008 final judgment granting summary judgment to defendant and dismissing plaintiff's claims, defendant submits that this basis for affirming the final judgment is properly raised in opposition to plaintiff's appeal and, therefore, that this cross-appeal is not necessary. *See Resolution Trust Corporation v. Fidelity & Deposit Co. of Md.*, 205 F.3d 615 (3rd Cir. 2000); *Rite Aid, Inc. v. Houstoun*, 171 F.3d 842, 853 (3d Cir. 1999); *E.F. Operating Corp. v. American Bldgs*, 993 F.2d 1046, 1048 (3d Cir. 1993). Defendant files this notice of cross-appeal to preserve its rights in the event that the Court determines that such a cross-appeal is necessary.

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Dated: January 27, 2009

CERTIFICATE OF SERVICE

I certify that this Notice of Cross-Appeal is being served on counsel of record this date by filing under the ECF system.

I certify under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'S. Payerle', is positioned above a horizontal line.

Stephen F. Payerle

January 27, 2009